

IN THE HIGH COURT OF JUDICATURE AT PATNA

**Letters Patent Appeal No.991 of 2012
IN
Civil Writ Jurisdiction Case No.7712 of 2010**

- =====
1. Amar Nath Mishra, son of late Diwanath Mishra, resident of Raj Quarter, Shyama Bagh, P.S. University, Town & District Darbhanga.
 2. Mahesh Jha, son of Ramdev Jha, resident of Mohalla Naya Balbhadrapur, P.S. Laheriasarai, District Darbhanga.

.... Petitioners- Appellant/s

Versus

1. The State of Bihar.
2. The Secretary, Department of Personnel and Administrative Reforms, Government of Bihar, Patna.
3. The Principal Secretary, Department of Science and Technology, Government of Bihar, Patna.
4. The Joint Secretary, Department of Science and Technology, Government of Bihar, Patna.
5. The Principal, Government Polytechnic College, Darbhanga.

.... Respondents-Respondent/s

6. Pratap Narayan Thakur, son of late Arjun Thakur, resident of Mohalla-Sultanganj, Near Mahadev Mandir, P.S. and District-Madhubani.

Petitioner-Respondent

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Appearance :

For the Appellant/s : Mr. Bidhanesh Misra, Advocate
Mrs. Tanuja Mishra, Advocate
Mr. Chandan Jha, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, A.C. to S.C.5

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CORAM: HONOURABLE THE CHIEF JUSTICE

And

HONOURABLE MR. JUSTICE GOPAL PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 22-01-2015

The appellants herein, were appointed as part time Lecturers in the Government Polytechnic, Darbhanga-5th respondent herein between 1995 and 1999. Claiming the relief of regularization of their services, they approached this Court, by filing CWJC No.5418 of 2000. The same was



disposed of by this Court through order dated 07.02.2007 directing the Chief Secretary of the State, to constitute a committee of three members of Secretaries, in terms of the judgment of the Hon'ble Supreme Court in **Secretary, State of Karnataka and others Vs. Uma Devi (3) and others {(2006) 4 SCC 1}** and to take the necessary steps, depending upon the recommendation of the Committee.

A Committee was constituted by the Chief Secretary as directed by this Court. On 20.11.2008, an order was issued stating that the appellants do not qualify for being regularised. The appellants filed CWJC No.7712 of 2010 challenging the said order.

The principal ground urged by the appellants is that though a committee of three members was constituted and entrusted with the work of evaluation of the cases for regularization, only one member passed the order. The learned Single Judge disposed of the writ petition just by observing that the respondents shall act with prudence, henceforth.

Not satisfied with the nature of disposal given by the learned Single Judge, the appellants filed this Letters Patent Appeal.

Heard Sri Bidhanesh Misra, learned counsel for

the appellants and Sri Anil Kumar Sinha, learned counsel for the respondents.

When the appellants approached this Court earlier, the writ petition was disposed of directing, that a Committee of three members of Secretary shall be constituted, in terms of the judgment of Hon'ble Supreme Court in **Uma Devi's case** (supra). That direction was implemented by the Chief Secretary and a Committee was constituted. It was incumbent upon the Committee to meet and to consider the case of the appellants.

Had it been a case, where one member was absent, there could have been a semblance of legality for the recommendation or findings of the Committee, in which two members were present. In the instant case, however, the impugned order was passed only by one member. It is just understandable as to what legality, it can carry. The very purpose of constitution of the Committee was defeated. The only member, who dealt with the matter, ought to have adjourned it to a next date, so that it could be considered when the Committee in its entirety or at least two of its members, meets.

The patent illegality, that crept into the proceedings ought to have been dealt with, in the writ

petition.

Hence, Letters Patent Appeal is allowed and the order dated 29.09.2011 passed by the learned Single Judge in CWJC No.7712 of 2010 is set aside. As a result, the writ petition is allowed and the order dated 20.11.2008 passed by the respondent is set aside. It is directed that three members Committee shall examine the cases of the appellants in accordance with law and pass appropriate order within a period of two months from today.

Interlocutory applications, if any, shall stand disposed of. There shall be no order as to costs.

(L. Narasimha Reddy, CJ)

Sunil/-

(Gopal Prasad, J)

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